

REMARKS

The following remarks are submitted to be fully responsive to the final Official Action dated February 18, 2009, as has been issued prior to the filing of the attached Request for Continued Examination. It is further submitted that this response is timely filed within the three-month shortened statutory period for response. Should any fees be required, the Commissioner is authorized to charge Kagan Binder Deposit Account No. 50-1775 and thereafter notify us of the same. Reconsideration of all outstanding grounds of the rejection and allowance of the subject application are believed in order and respectfully requested.

The current final Official Action is in response to a Pre-Appeal Brief Request for Review that was filed by the Applicants on August 28, 2008. Applicants' arguments set forth in the Pre-Appeal Brief were found persuasive, and the finality of a previous final Official Action (dated March 28, 2008) was withdrawn. An amendment to claim 8 in a response filed by the Applicants on December 6, 2007, is asserted by the Examiner to be the reason for the finality of the current final Official Action.

In the current final Official Action, claims 8, 9 and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Macoviak et al. (US Pat. No. 6,059,757; hereinafter referred to as "Macoviak '757") in view of Macoviak et al. (US Pat. No. 6,395,014; hereinafter referred to as "Macoviak '014"). The Examiner provided that Macoviak '757 discloses "a device comprising: a catheter 14; a retaining ring 20 (element 20 is a ring, as seen in Fig. 1(a)); a membrane 22 attached to the retaining ring at multiple spaced fixation points around the circumference of the ring; wherein the retaining ring is attached to the catheter via elements 18; wherein the retaining ring comprises an inner surface and the membrane s [sic] tethered to said inner surface (see Fig. 1(a)); wherein the expansion and compression f [sic] the membrane will expand and compress the opening defined by the ring in the proximal end of the tube." The Examiner admits that Macoviak '757 is silent, however, regarding a valved device having an elongated tube of filter material.

The Examiner further provided that using a device having an elongated tube of filter material during cardiovascular surgery is well known in the art, and cited Macoviak '014 as including an example of such a tube of filter material 102. The Examiner provided that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Macoviak '757 to include the filter material disclosed by Macoviak '014, and that "the modification will have the filter material attach [sic] to the retaining ring disclosed in the '757 reference, similar to how it is attached to ring 16 in the '014 reference."

As submitted above, claim 8 is amended to include the feature of dependent claim 12 and additional language. Accordingly, claim 12 is cancelled.

Applicants submit that with the amendment to claim 8, the claim provides that the membrane is attached to an inner surface of the valve retaining ring, and that expansion of the membrane results in the membrane expanding against that inner surface. In Macoviak '757, the membrane 22 cannot expand against an inner surface of the catheter 14, for example, because the membrane is adjacent an outer surface of catheter 14. It would not be possible for the membrane 14 to be in a closed, or expanded, configuration and be on an inner surface, as in the present claims. Accordingly, the rejection of the current claims should be withdrawn.

Applicants also submit that proper motivation to combine the references was not provided by the Examiner, regardless of the amendments above. If the Macoviak '757 and Macoviak '014 references are combined, the resulting device will not function as the device of the present application. Modifying the device of Macoviak '757 by adding a filter from Macoviak '014 would either change the principle of operation of the Macoviak '757 device or render the Macoviak '757 device unsatisfactory for its intended purpose.

In addition, the Examiner erroneously provided in the final Official Action that attachment point 20 is a valve seating retaining ring, as in the present claims. Figures 1 and 2 of Macoviak '757 show that attachment point 20 is just that: a point where an advancement and retraction member 18 is attached to a leaflet 22. Since Figs. 1(a) and 1(b) are cross-sectional views, they show the attachment point 20 along the outer surface of each leaflet 22. There is no description in the specification of attachment member 20 being a ring of any kind, and specifically not a ring that is both attached to an end of a filter tube and that has a membrane connected to its inner surface such that expansion and compression of the membrane expands and compresses the ring and the end of the filter tube, as in the present application. Attachment point 20 is not a ring, and the Examiner's characterization of attachment point 20 as such is a clear error.

Conclusion

Accordingly, it is submitted that claims 8, 9, 11 and 13 are currently in condition for allowance, a notice of which is earnestly solicited. If the Examiner finds any issue remaining after consideration of this response, the Examiner is invited to contact the undersigned, at the Examiner's convenience, in order to expedite any remaining prosecution.

Respectfully Submitted,

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